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SUPREME COURT, U.S.

NO. 82- 5352

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LARRY DARNELL WILLIAMS,

Petitioner.

v.

STATE OF NORTH CAROLINA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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NO. 82-5352

LARRY DARNELL WILLIAMS,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT STATE OF NORTH CAROLINA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Pursuant to the authority of Rule 22 and in the manner provided by Rule 46.5 of the Supreme Court Rules, the State of North Carolina responds to the petition of Larry Darnell Williams and requests that this Court deny the petition on the basis of the facts and authorities hereinafter set forth for the Court's consideration.

CITATION TO OPINION BELOW

Larry Darnell Williams was tried, convicted, and received a sentence of death in the Superior Court of Gaston County. In an opinion reported in State v. Williams, 305 NC 656, 292 SE 2d 243 (1982), the Supreme Court of North Carolina found no error in the conviction and affirmed the judgment of death.

JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 USC §1257(3).

QUESTIONS PRESENTED

I. DID THE EXCUSAL FOR CAUSE OF POTENTIAL JURORS MARY NEAL AND FRANK ROGERS VIOLATE THE RULE ENUNCIATED IN WITHERSPOON v. ILLINOIS, 391 U.S. 510 (1968), THEREBY INVALIDATING THE PETITIONER'S DEATH SENTENCE?

II. SHOULD THIS COURT REVIEW THE SUPREME COURT OF NORTH CAROLINA'S INTERPRETATION OF STATE LAW WHICH IS CORRECT AS A MATTER OF FEDERAL CONSTITUTIONAL LAW?

STATEMENT OF THE CASE

Petitioner was indicted for the first degree murder and armed robbery of Eric Joines on September 10, 1979, and tried at the 2 June 1980 Session of Gaston County Superior Court. After verdicts of guilty, a sentencing hearing was convened where one aggravating and ten mitigating circumstances were submitted to the jury. Following a recommendation for the death penalty and the trial court's acceptance of that recommendation, petitioner appealed to the Supreme Court of North Carolina. The decision of that Court affirming the petitioner's conviction was rendered on June 2, 1982 and is published at 305 NC 656, 292 S.E. 2d 243.

Eric Joines was employed on the third shift at the Service Distributing Company Gas Station on Highway 321 North in Gastonia, North Carolina. His responsibilities were to sell gas and oil and there was a small booth near the gas pump where he collected his receipts. On June 3, 1979, Mr. Joines began work in the late afternoon and spoke with a friend on the phone later in the evening. When a customer stopped for gas at 1:00 a.m., however, he found Mr. Joines lying in a pool of blood inside the glass booth. The back of his head had been shot away and he was gagging and coughing, struggling to breathe. The customer called the police and Mr. Joines was taken to the hospital. An inventory taken later that night established that $274.02 was missing from the gas station. Several days later Mr. Joines died. (R. pp. 112-116).

Meanwhile, through another investigation, the police learned that Linda Massey, Darryl Brawley and the petitioner could be involved in the gas station killing. When the detectives contacted Ms. Massey, she related the following sequence of events for June 3rd. Massey began the day by drinking wine and continued drinking beer or liquor throughout the afternoon. After borrowing a car from Robert Brown, Massey, Darryl Brawley (her cousin) and the petitioner (her boyfriend) left Charlotte around dusk and drove down I-85. Apparently there was also a

fourth unidentified person in the car. After making several stops, the foursome arrived at the Service Distributing Company Gas Station. Massey bought a soda and they left, but returned a few minutes later. The petitioner told Massey to stop the car by the side of the glass booth. Eric Joines was talking on the phone during this time. (R. pp. 117-119).

The petitioner and the fourth passenger got out of the car and went inside the booth. The passenger began to search Joines, who by this time had his hands in the air. Massey looked away, apparently not believing what she was seeing. She then heard a loud noise, like a car backfiring. The petitioner and his accomplice got back in the car and told Massey to pull off. She never saw Joines, the attendant, again. The foursome then went back to Charlotte. By this time, it was approaching dawn. (R. pp. 119-120).

Darryl Brawley also gave the police a version of the June 3rd events. He also recalled the foursome leaving Charlotte around dusk and remembered that the petitioner carried a .20 gauge sawed-off shotgun. After making several stops, the group arrived at the gas station, where the petitioner and the other male passenger got out and went into the glass booth. Brawley recalled that the passenger jumped on the attendant, Joines, and that the petitioner was holding the shotgun. After pulling the passenger away from Joines, he pointed towards the cash register in the booth. The passenger took money out of the register while the petitioner held the gun on the attendant, who was lying on the floor. The passenger ran out of the booth and Brawley heard the shotgun go off. The petitioner then came out with the money and jumped into the car, commanding "Let's go." He put the gun between the car seats and the foursome returned to Charlotte. (R. pp. 120-123). (Both Massey and Brawley were permitted to plead guilty to accessory after the fact in exchange for their trial testimony. Each received a ten year sentence to run concurrently with a similar sentence for a Cabarrus County murder-robbery. In the latter case, Massey and Brawley also testified pursuant to this plea bargain agreement.) (R. pp. 116-117, 124, 129).

At the sentencing phase, the State introduced evidence of a single aggravating circumstance, that the Gaston county murder was part of a course of conduct in which defendant committed other crimes of violence against another person [N.C. Gen. Stat. 15A-2000(e)(11)]. The other crime was an armed robbery-murder of a Seven-Eleven Store in nearby Cabarrus County where Mrs. Susan Pearce, a store clerk, was killed. Apparently this crime occurred a short time after the Eric Joines murder, and the same persons were involved in this crime.

Linda Massey recalled that after the foursome left Gaston County, they drove to Concord and stopped at a Seven-Eleven Store. Again the passenger and petitioner Larry Williams went into the store. Petitioner returned to the car for his gun. Shortly thereafter Massey heard a loud noise. She turned to look through the large plate glass windows of the store and saw Mrs. Pearce grab her chest. The two intruders returned to the car, and the foursome headed back to Charlotte. On the way, the petitioner told Darryl Brawley that "he didn't do no work, he didn't get no money." After their arrival back in Charlotte, the petitioner gave Massey coins and bills wrapped in bank wrappers. Sometime thereafter but before his arrest, the petitioner also instructed Massey to get rid of a box of shotgun shells that she had been keeping for him. (As noted above, Massey's testimony in Cabarrus County case was also the result of a plea bargain.) (R. pp. 192-194, 198-199).

Darryl Brawley also recalled the Cabarrus County shooting, although he was asleep during part of the episode. He awoke in the car when he heard a loud noise and saw the petitioner climbing back into the front seat with a bag of money. (R. p. 294).

Other evidence presented at the sentencing phase established that Mrs. Pearce died of a gunshot wound to the neck, and that $67.00 had been taken from the Seven-Eleven Store. The crime was discovered at approximately 6:15 a.m. (R. pp. 119-202).

The petitioner presented evidence of ten mitigating circumstances at the sentencing phase hearing. It was stipulated that the petitioner had no significant history of prior criminal activity, that he was twenty-four years old at the time of the crimes, and that he has an I. Q. of 69. (R. pp. 208-209). Other evidence showed that the petitioner had been a good worker, that he had cooperated with his attorney in a personal injury case, and that he had voluntarily admitted himself to a drug clinic for heroin addiction. (R. pp. 216-217). Further, his family members and friends testified to his good character and his love for them as a family member. (The "any other circumstances" mitigating circumstance [N.C.Gen. Stat. §15A-2000(f)(9)] was also submitted.) (R. pp. 267-274).

The petitioner also presented testimony which tended to show that Darryl Brawley had made statements to other jail inmates and to police detectives which were inconsistent with his trial testimony, and that he had bragged about sending the defendant to prison. (R. pp. 217-219, 249-263).

REASONS FOR NOT GRANTING THE WRIT

I. THE EXCUSAL FOR CAUSE OF POTENTIAL JUROR, MRS. NANCY MELTON, DID NOT VIOLATE THE RULE ENUNCIATED IN WITHERSPOON v ILLINOIS, 391 US 510 (1968), BECAUSE HER ANSWERS ON VOIR DIRE CONCERNING HER ATTITUDES TOWARD THE DEATH PENALTY, WHEN CONSIDERED CONTEXTUALLY, SHOW THAT SHE WAS IRREVOCABLY COMMITTED BEFORE THE TRIAL BEGAN TO VOTE AGAINST THE DEATH PENALTY REGARDLESS OF WHAT THE FACTS AND CIRCUMSTANCES MIGHT PROVE TO BE FROM THE EVIDENCE ADDUCED AT TRIAL.

The holdings of Witherspoon v. Illinois, 391 US 510 (1968) and its progeny are straightforward. A sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction. However, a State is not prohibited from excluding for cause veniremen who made it unmistakably clear that they would automatically vote against capital punishment without regard to any evidence that might be developed at trial. 391 US at 522-523. Improper excusal for cause on Witherspoon grounds of but one venireman will invalidate the death sentence. Davis v. Georgia, 429 US 122 (1976). The essence of the Witherspoon rule is that a prospective juror may not be challenged for cause based upon his or her views about capital punishment unless those views would prevent or substantially impair the performance of his or her duties as a juror in accordance with the juror's instructions and oath. A State may constitutionally insist that a juror will consider and decide the facts of a case impartially and conscientiously apply the law as charged by the court. Adams v. Texas, 448 US 38 (1980). Potential jurors cannot be disqualified for cause because the possibility of the death penalty might affect their deliberations on any issue of fact. Id.

There is no question that the Supreme Court of North Carolina recognizes Witherspoon and its progency as the law of the land. In footnote 3 of his petition for this writ, the petitioner catelogued numerous cases wherein Witherspoon issues were raised on appeal and considered by the Supreme Court of North Carolina.

The petitioner challenges the Supreme Court's interpretation of Witherspoon in the context of prospective jurors' responses to Witherspoon questions which appear to be equivocal when taken out of context. In his case, petitioner asserts that the answers of prospective juror Nancy Melton failed to demonstrate that she was irrevocably committed before the trial began to vote against the death penalty regardless of the facts and circumstances which might emerge at trial because she responded "I'm not sure I could" or "I'm not positive I could" to some of the Witherspoon questions propounded to her. Citing State v. Avery, 299 NC 126, 261 SE 2d 802 (1979), the Supreme Court of North Carolina rejected this contention after considering Mrs. Melton's responses in the context of her entire voir dire examination on this point. State v. Williams, 305 NC 656, 292 SE 2d 243, 251 (1982).

Apparently the petitioner believes that any equivocation on the part of a prospective juror who was successfully challenged for cause on Witherspoon grounds equates to a violation of the Witherspoon rule thereby invalidating the death sentence. The Supreme Court of North Carolina takes a pragmatic common sense approach to Witherspoon issues. It reviews the entire jury selection voir dire of a prospective juror, as it relates to the Witherspoon issue, in order to ascertain whether the prospective juror had in fact clearly and unmistakably conveyed his or her irrevocable commitment to vote against the death penalty (regardless of the evidence presented) even though some of the prospective jurors' responses were phrased "I'm not sure I could" or "I'm not positive I could." If the totality of the voir dire responses to Witherspoon questions leads unmistakably to the conclusion that the prospective juror would automatically vote against capital punishment without regard to any evidence which might be developed at trial, then the substance of this predisposition prevails over the form of the answer. This approach is rational, reasonable, and does not violate the Witherspoon rule. This interpretation permits the State to constitutionally cull

from the jury those prospective jurors whose views on capital punishment would prevent or substantially impair the performance of their duties as jurors in accordance with their instructions and oath as they relate to capital punishment.

The issue raised by the petitioner is not a new one. It was also raised in State v. Barfield, 298 NC 306, 259 SE 2d 510 (1979), cert. denied 448 US 907 (1980), rehearing denied 448 US 918 (1980), cert. denied 102 S.Ct. 494 (1981), rehearing denied 102 S.Ct. 693 (1981), habeas corpus petition dismissed sub nom. Barfield v. Harris, 540 F. Supp. 451 (E.D.N.C. 1982). This was one of the points raised in Barfield's petition for writ of certiorari which this Court denied [448 US 907 (1980)].

Very recently, Chief District Court Judge Dupree analyzed this issue when it was raised by Barfield by way of a habeas corpus petition. Barfield v. Harris, supra. The following excerpt from Judge Dupree's Memorandum of Decision and Order captures the essence of the issue:

> Petitioner contends that Mr. Dent's exclusion violated Witherspoon because he never stated unequivocally that he could not vote for the death penalty under any circumstance. In support of this contention petitioner correctly notes that the exclusion of even one prospective juror in violation of the Witherspoon standard invalidates a subsequent sentence of death, regardless of whether the state went to trial with peremptory challenges unexercised. Davis v. Georgia, 429 US 122, 97 S.Ct. 399, 50 L.Ed. 2d 339 (1976); Moore v. Estelle, 670 F. 2d 56 (5th Cir. 1982); Burns v. Estelle, 592 F.2d 1297 (5th Cir. 1979), adopted en banc, 626 F.2d 396 (5th Cir. 1980). That the relevant statements by the prospective juror must be completely unequivocal has been recently reaffirmed by the Fifth Circuit in Granviel v. Estelle, 655 F.2d 673 (5th Cir. 1981). There a prospective juror
>
> > "was first asked whether he had conscientious scruples against the infliction of the death penalty, whereupon he stated, 'I don't know what that means.' When asked if he could ever vote to inflict the death penalty, he replied, 'No, I don't think I could.' Then, in response to the question, 'You just don't feel like you would be entitled to take another person's life in that fashion?' He nodded and then said, 'No, I could not.'" Id. at 677.
>
> The Fifth Circuit held that "[t]hese questions and answers fall far short of an affirmation by [the prospective juror] that he would automatically vote

against the death penalty regardless of the evidence," thus invalidating the death sentence. Id. See also Alderman v. Austin, 498 F. Supp. 1134 (S.D. Ga. 1980); State v. Johnson, 298 NC 355,366,259 SE 2d 752, 759 (1979) (Johnson II).

Petitioner contends that any time a prospective juror states that he "believes" or "thinks" or "feels" that he could not vote to impose the death penalty, rather than stating absolutely that he could not, the juror may not be excluded under Witherspoon. The precise words used by the juror, however, are not dispositive. Burns and Granviel turn instead on the perfunctory nature of the voir dire examination and on the fact that the questions were directed at whether the responsibility to recommend life or death would "affect" their deliberations as juror. In contrast, Darden v. Wainwright, 513 F. Supp. 947 (M.D. Fla. 1981), the court held that there was no Witherspoon violation where a prospective juror, in response to a question as to whether he would be unwilling to return a recommendation of death, had answered, "I believe I would." Id. at 960. The court rejected the contention that this response was ambiguous and held that "the hard question was asked, repeatedly and without deviation from the minimal requirements of Witherspoon." Id. at 962. Similarly, in McCorquodale v. Balkcom, 525 F.Supp. 408 (N.D. Ga. 1981), appeal pending, the court found that initial equivocation during voir dire examination was not fatal when the prospective jurors ultimately did make it unmistakably clear that they could not vote for the death penalty. The court assessed the "bottom line" rather than search the entire voir dire for signs of equivocation. Id. at 425. "The trial judge often must make judgments as to whether or not a prospective juror really means it when he says something. This Court believes some deference is due the judgment of the trial judge, who heard these two jurors as they stated that their reconsidered positions were that they could not impose the death penalty under any circumstances." Id. See also Mason v. Balkcom, 487 F. Supp. 554, 560 (M.D. Ga. 1980), reversed on other grounds, 669 F.2d 222 (5th Cir. 1982); Douglas v. Wainwright, 521 F.Supp. 790, 796-800 (M.D. Fla. 1981).

The court views the examination of Mr. Dent in the same light. Although he certainly equivocated during the voir dire, he stated several times that under no circumstances could he vote to recommend the death sentence. The trial judge was actively involved in the examination and carefully phrased the "hard" question. He apparently believed that Mr. Dent's opinion, ultimately was unequivocal. This court agrees and therefore holds that there was no Witherspoon violation in the exclusion of Mr. Dent. Indeed, in view of Mr. Dent's many statements that he could not under any circumstances vote to impose the death penalty, denying the motion to excuse him for cause might well have been error. 540 F.Supp. 451, at 464-466.

As Judge Dupree made clear, there is no Witherspoon infirmity for a court to focus on the "bottom line" after examining the voir dire in question, rather than to merely search for signs

of any equivocation. A trial judge sees and hears the answers given by a prospective juror. He or she is uniquely situated to see the demeanor of prospective jurors, to evaluate their behavior, and to assess the nuances and intangibles that elude capture on the written page of a transcript or record on appeal. A trial judge's interpretation of some seemingly equivocal responses should not lightly disregarded as long as the "bottom line" unmistakably leads to the conclusion that the prospective juror would vote against capital punishment regardless of evidence which might be developed at trial.

It is the contention of the State that the Supreme Court of North Carolina's interpretation of Witherspoon in this petitioner's case was correct. Review of the questions propounded to Mrs. Melton reveal that the trial judge asked the hard Witherspoon questions. Mrs. Melton's responses, when viewed contextually, reveal that her excusal for cause did not violate the rule enunciated by this Court in Witherspoon. For this reason, this Court should not grant the petitioner the writ he seeks.

In addition, the State also believes that review of this case at this time on this issue would be premature. Barfield v. Harris, supra, is currently pending in the Fourth Circuit Court of Appeals. The decision of the Fourth Circuit will more fully develop and clarify this issue and could obviate the need for this Court to review this issue.

II. THE SUPREME COURT OF NORTH CAROLINA INTERPRETED THE PROVISIONS OF G.S. 15A-2000 AS A MATTER OF STATE LAW AND THIS INTERPRETATION IS NOT REPUGNANT TO CONSTITUTIONAL PRINCIPLES.

The Supreme Court of North Carolina, in State v. Williams, supra; State v. Pinch, ____ N.C. ____, 292 S.E. 2d 203 (1982); and State v. Smith, 305 N.C. 691, 292 S.E. 2d 264 (1982) (all handed down on June 2, 1982) explicitly held what had been previously assumed concerning the proper reading of G.S. 15A-2000.[1] The Court construed the language of G.S. 15A-2000 (b) and (c) to require the trial court to charge the sentencing jury in a first degree murder case that if a jury found beyond a reasonable doubt that (1) one or more statutory aggravating circumstances existed, (2) that these aggravating circumstances were substantial enough to warrant the death penalty and (3) that the aggravating circumstances outweighed the mitigating circumstances, then the jury must recommend a sentence of death.

Williams had attacked the instructions given by the trial court in his case in the Supreme Court of North Carolina on the basis that the instructions violated his statutory rights under G.S. 15A-2000 and the United States Constitution since the instructions allegedly "withdrew from the jury its final option to recommend life imprisonment notwithstanding its earlier findings." 305 N.C. at 688. Now, realizing that a state may constitutionally require a recommendation of death upon the making of certain findings by the sentencer (Jurek v. Texas, 428 U.S. 262 (1976); Adams v. Texas, supra), Williams has shifted his ground. Instead of claiming a

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[1]North Carolina Pattern Instructions, Crim. §150.10 (Replacement, 1980). State v. Barfield, supra; State v. Martin, 303 N.C. 246, 278 S.E. 2d 214, cert. denied ____ U.S. ____, 102 S.Ct. 431, 70 L.Ed. 2d 240 (1981); State v. Rook, 304 N.C. 201, 283 S.E. 2d 732 (1981), cert. denied ____ U.S. ____, 102 S.Ct. 1741, 72 L.Ed. 2d 155 (1982).

Federal question is presented because the State's interpretation of the North Carolina death penalty statute is unconstitutional - the claim made below - Williams now suggests that a Federal question for review exists for this Court because the Supreme Court of North Carolina allegedly misread Furman v. Georgia, 408 U.S. 238 (1972) and its progeny and felt bound, as a matter of Constitutional law, to construe G.S. 15A-2000 to require a death penalty recommendation if all the issues in G.S. 15A-2000(c) are answered affirmatively. If it were true that the Supreme Court of North Carolina had acted as it did solely because it misconstrued this Court's decisions, then a Federal question is presented: United Airlines v. Mahin, 410 U.S. 623 (1973). However, a fair and complete reading of the portions of the Supreme Court of North Carolina's opinions dealing with this issue in State v. Pinch, supra; State v. Smith, supra; and State v. Williams, supra all reveal that the Supreme Court of North Carolina's construction of G.S. 15A-2000 to require a recommendation of death after certain findings are made was not based on a perceived Constitutional requirement, but rather on a plain reading of the statute itself.

In State v. Pinch, supra, the case upon which State v. Williams, supra and State v. Smith, supra largely rely, the Court held that the instruction to the jury that they must return a recommendation of death if they found all three issues submitted to them for consideration was proper, since it was based on the statutory criteria set forth in G.S. 15A-2000(b) and (c). The Court went on to say that the jury could not be allowed to exercise unbridled discretion and disregard the findings it made pursuant to G.S. 15A-2000(c), but rather must exercise guided discretion within the "carefully defined set of statutory criteria" (292 S.E. 2d at 227). The Court then cited State v. Goodman, 298 N.C. 1, 257 S.E.

2d 569 (1979) to support the proposition that the jury may not be instructed to "disregard the procedure outlined by the legislature and impose the sanction of death at their own whim." 298 N.C. at 34, 257 S.E. 2d at 346. (emphasis added).

The North Carolina Supreme Court in Pinch construed G.S. 15A-2000. However, the thrust of the opinion in Pinch was not that the Supreme Court of North Carolina must, for constitutional reasons, construe its death penalty statute as it did, but rather, that the jury should not be allowed in making the sentencing decision to disregard the procedure outlinedby the legislature. The Court's decisions in Pinch, Smith, and Williams nowhere state the North Carolina Supreme Court felt compelled by the Federal Constitution to interpret G.S. 15A-2000 as it did, but rather reiterate a plain reading of the statute required the result reached by the Court. In fact, in State v. Pinch, supra, the Court found it necessary to add a footnote citing Jurek v. Texas, supra for the proposition that the Supreme Court of North Carolina's construction of the statute in question is Constitutionally permissible. This alone clearly indicates that the Supreme Court of North Carolina was not interpreting its statute as it did due to some feeling of Federal Constitutional mandate. However, if there is any question as to the basis upon which the majority in Pinch interpreted the language of G.S. 15A-2000, that question is resolved by referring to the North Carolina Supreme Court's opinions in State v. Smith, supra and the opinion below in this matter. In State v. Smith, supra the Supreme Court of North Carolina stated the instruction that the jury must return a verdict of death after making certain findings "comports with the procedure contemplated in G.S. 15A-2000(b)." 292 S.E. 2d at 275. In the matter now before the Court, the North Carolina Supreme

Court rejected the argument that the jury despite its findings made pursuant to G.S. 15A-2000(c) ought still be able to return a life sentence if it desired. The Court stated:

> "The defendant argues that even if the jury fails to find sufficient mitigating circumstance(s) which outweigh the aggravating circumstances found, it may still, in its discretion, impose a sentence of life imprisonment. We find no authority for that position in G.S. 15A-2000(c) or elsewhere....G.S. 15A-2000(b) requires the jury to deliberate and render a sentence recommendation 'based upon' two considerations: (1) whether sufficient aggravating circumstances exist and (2) whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found. The statute specifically requires that the jury sentence recommendation be 'based on these considerations'- not unbridled discretion. G.S. 15A-2000(b)(3). This specific mandate is clear - it requires no interpretation." 292 S.E. 2d at 263 (emphasis added)

Justice Exum, the lone dissenter in State v. Finch, supra as well as the matter now before the Court and State v. Smith, supra, argued initially that the majority decided to construe the statute "as it did on the sole ground that otherwise the statute would be subject to constitutional attack." 292 S.E. 2d at 230. However, he then accused the majority of having fallen into the same logical trap in reading G.S. 15A-2000 to which he had previously succumbed when, in State v. Rook, supra he wrote that:

> "the clear import of our statute is that a jury, upon finding the requisite existence of aggravating circumstances and their sufficient substantiality, may not recommend life imprisonment unless it further finds that the mitigating circumstances are sufficient to outweigh the aggravating circumstances." 304 N.C. at 243, 283 S.E. 2d at 757.

As he proceeded further in the dissent, he argued that the majority in construing the statute based their construction on a misreading of State v. Goodman, supra and then, finally, while admitting under Jurek v. Texas, supra the majority's interpretation of the state statute would pass Constitutional muster, he claimed his new view of how the statute should be read was more solidly supported by the

decisions of the United States Supreme Court and is closer to the legislative intent of the North Carolina General Assembly.

While initially accusing the majority of deciding the statute due to a perceived constitutional compulsion, Justice Exum then asserted the majority construed the statute as they did due allegedly to reading the statute incorrectly as he had previously done and misreading state case law. Thus, the vast part of the dissent in Pinch, which Justice Exum adopted in his dissent in Smith and Williams reaffirms what the majority opinions in Pinch, Smith and Williams clearly show: That the statute in question was construed by the Supreme Court of North Carolina as a matter of state law.

This Court must defer to the interpretation placed on a state statute by the highest state court where, as here, the interpretation is made solely as a matter of local law: Jankovich v. Indiana Toll Road Commission, 379 U.S. 487 (1965); Scripto v. Carson, 362 U.S. 207 (1960); c.f. Hankerson v. North Carolina, 432 U.S. 233, 244-245 (1977). The North Carolina Supreme Court's interpretation of the statute is not repugnant to Federal Constitutional mandates. Jurek v. Texas, supra. Therefore, this Court ought not issue its writ of certiorari to the Supreme Court of North Carolina since there is no Federal question here presented for review.

CONCLUSION

For the foregoing reasons, the State of North Carolina submits that Larry Darnell Williams' petition for writ of certiorari should be denied.

Respectfully submitted this the 5th day of October, 1982.

RUFUS L. EDMISTEN
Attorney General

Thomas F. Moffitt
Assistant Attorney General

Joan H. Byers
Assistant Attorney General

Elizabeth C. Bunting
Assistant Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

Telephone: 919/733-5725

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Thomas F. Moffitt, Assistant Attorney General, do hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have on this date served a copy of the foregoing RESPONSE TO PETITION FOR WRIT OF CERTIORARI upon the attorney of record for petitioner Larry Darnell Williams, by depositing same in the United States Mail, first class postage prepaid, and properly addressed as follows:

Adam Stein and
Ann B. Petersen
Office of Appellate Defender
P. O. Box 1070
Raleigh, North Carolina 27602

This the 5th day of October, 1982.

RUFUS L. EDMISTEN
Attorney General

Thomas F. Moffitt
Assistant Attorney General

P. O. Box 629
Raleigh, North Carolina 27602-0629
919/733-5725

NO. 82-5352

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LARRY DARNELL WILLIAMS, Petitioner,	)	
v.	)	AFFIDAVIT OF MAILING
STATE OF NORTH CAROLINA, Respondent.	)	

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THOMAS F. MOFFITT, being sworn, states:

1. I am an Assistant Attorney General for the State of North Carolina representing the Respondent, State of North Carolina.

2. On October 5, 1982, at approximately 1:00 p.m. EDT, I personally placed the original and nine copies of the enclosed Response to Petition for Writ of Certiorari to the Supreme Court of North Carolina in an envelope properly addressed to the Clerk of this Court, with express mail service postage prepaid, and deposited the envelope in a mail box under the exclusive care and custody of the United States Postal Service within the City of Raleigh, State of North Carolina.

Thomas F. Moffitt
Thomas F. Moffitt
Assistant Attorney General

Sworn to before me this 5th day of October, 1982.

Notary Public

My Commission Expires: My Commission Expires 9/2/84

(SEAL)

DEBRA W. WASHBURN NOTARY PUBLIC CARTERET COUNTY, N.C.